# PSYCHIATRIC FACILITIES REVIEW BOARD

## ANNUAL REPORT April 1, 2004 - March 31, 2005

The Psychiatric Facilities Review Board is appointed by the Governor in Council in accordance with Section 61 of the Hospitals Act of Nova Scotia, and associated provisions that relate to mental health matters. The responsibilities of the Board are primarily to review the decision of the treating psychiatrist that a person in a psychiatric facility should be held under "formal" status and whether he/she is capable of consenting to psychiatric treatment. By legislation, a person is held under formal status if, after a period of observation, a psychiatrist has certified that the person (a) suffers from a mental disorder and (b) is a danger to their own safety or the safety of others. The Board is also authorized to review a declaration of competency of a patient in respect to the administration of the patient's estate, and to make recommendations as to the treatment, care or placement of a patient.

The responsibilities and powers of the Board are formidable: they can operate to authorize detention against an individual's wishes even when no criminal act has been committed and they can deprive an individual of the right to make autonomous decisions with respect to their treatment. Outside the area of criminal law and child/adult protection, this power to interfere with individual autonomy is unprecedented. Therefore the Board carries a weighty onus to ensure to the extent possible that its decisions, both in terms of substance and procedure, are reached in a judicious manner within the context of the utmost respect for the rights of the individual whose interests are at stake.

This annual report is presented in two parts. Part I presents the statistics and trends of the Board's operation during the period from April 1, 2004 - March 31, 2005. In Part II we bring to the attention of the Legislature issues of present concern.

### Part I Statistics and Trends

#### a) Introduction

During this twenty-sixth year of operation, April 1, 2004 - March 31, 2005 the Board received 57 requests for review of formal status under sec. 65 of the Hospitals Act. Additionally, two (2) files were reviewed automatically under sec. 64 of the Hospitals Act. The total number of reviews held in the period April 1, 2004-March 31, 2005, including both requested and automatic reviews, was 21 representing a follow-through percentage of 35.6 percent. This can be compared with figures from previous years such as: 24 in 2003 to 2004; 29 in 2002 to 2003; 32 in 2001 to 2002; 43 in 2000 to 2001. Thus there appears to be a declining trend.

It should be noted that the Hospitals Act provides that the Board has 14 days within which to issue its decision following a hearing. The Board routinely does so with written reasons within three to five working days. Section 65.1 of the legislation provides for a maximum of one month for the Board hearings to be scheduled from the date of request of review. In this year, the average number of days from the date a request for hearing was received to the date the hearing was conducted was 15 working days. The comparable figure for 2003 to 2004 was 13 days; for 2002 to 2003 was 10.6 days; 2001 to 2002 was 13.5 days; for 2000 to 2001 14.8 days, indicating no relative change in the time taken to hold the hearings.

The Board has access to statistics showing the total number of times formal status is invoked at any of the psychiatric institutions throughout the province. In 2004 to 2005 there were 383 formalizations; in 2003 to 2004 there were 356; in 2002 to 2003 there were 354; in 2001 to 2002 there were 387; in 2000 to 2001 there were 358 indicating relative stability over time.

b) Automatic Reviews

Under the Section 64 of the Hospitals Act, the Board is required to review the status of each patient held under formal status every six months for the first two years and once per year thereafter. This must be done regardless of whether the patient has requested the review or not.

In the period of April 1, 2004 - March 2005, two (2) automatic reviews were held. Of the two (2) automatic reviews, both patients retained their formal status. This is the same as 2003-2004.

c) Requested Reviews

Requested reviews are initiated primarily by requests from patients although on occasion requests come from hospitals as well. The number of patient requests increased this year from 54 (last year) to 57 (this year).

Of the 57 reviews, 29 were made informal by their attending psychiatrist prior to the hearing being held. Of the remaining 28 requests, nine (9) withdrew their request for review before their respective scheduled review dates. Thus Board conducted 19 hearings for patients who requested reviews. Of these 19 requested reviews, the status of 11 patients (57.9%) was upheld (i.e. they remained as formal patients) and the remaining eight (8) had their status changed to informal patients.

The Board routinely reviews Capacity to Consent to Treatment on all patients who request a review of their formal status, whether a request for such a review was made by the patient or not, as per the provisions of Section 63 of the Hospitals Act. Therefore nineteen (19) such reviews took place and 15 were upheld (78.9%).

d) Psychosurgery

As in the previous 25 years, there were no hearings held to determine whether there had been compliance with the requirements for psychosurgery.

e) Summary

In summary, this year showed a reduction in the number of hearings held and an increase in the number of changes in status from formal to informal. Care must be taken in drawing conclusions or offering explanations for these trends. As the patient numbers are small, only a few cases going the other way could reverse these trends.

Part II Comments

a) Appointments to the Board

The scheduling of hearings is made difficult by the limited availability of psychiatrists on the Board, who may have other professional responsibilities that are not easily re-arranged or who find the time commitment of serving on the Board too onerous. Efforts should be made to recruit more psychiatrists in order to facilitate more timely hearings.

It is anticipated that when the involuntary psychiatric treatment act comes into effect there will be more reviews, which will require additional psychiatric input in Board activities. Additionally, it is noted that the timing required for hearings has been shortened in the new Act.

The members of the Board bring to it, their respective professional qualifications and experiences. There is often a steep learning curve which each must go through. Psychiatrists must learn to judicially assess the opinions of colleagues. Lawyers must become familiar with basic psychiatry and hospital practice. Lay members must learn to apply their experience to the matters that come before the Board. Therefore, it is not only important that members appointed to the Board have relevant background, but also that they be committed to learning from the experience of others, and are committed to obtaining expertise from service on the Board. There is a significant time commitment involved in service to this Board, with many hearings taking over three hours. The issue of improved remuneration for all Board members must be urgently addressed if the quality of membership is to be maintained.

b) Procedures

It is very important that the Board's procedures comply with the principles of natural justice and that all participants before it fully appreciate that the Board is a judicial body with powers to affect the fundamental rights of people. Care is taken by the Board to assure that procedural issues such as adjournment, withdrawal of request, and exchange of information are handled in a proper manner and that all parties are given full opportunity at a hearing to present relevant evidence and make submissions. The Board is concerned that written reports are not being routinely provided to patients in advance of the hearings.

The Board continues to be concerned about both the quality of the written reports that psychiatrists submit to the Board, and the quality of the testimony that is provided to the Board by members of the clinical staff attending the hearings. Many clinicians appear ill informed of the statutory criteria upon which their decisions must be based, or ill equipped to present their evidence before the Board and/or to defend their opinions. As the majority of the hearings take place in the HRM, the Board urges the Dalhousie University Department of Psychiatry to consider embarking on an educational program for its psychiatrists to review the mental health provisions of the Hospitals Act, the statutory criteria therein, and to consider providing practical sessions related to giving oral evidence before a tribunal. This is of particular concern in view of the Involuntary Psychiatric Treatment Act that will likely come into effect this year. Psychiatrists must ensure that they are thoroughly familiar with the mental health legislation of this province, including the relevant statutory criteria, the

cogency of evidence necessary to satisfy the civil standard of proof, and the relevant case law related to civil mental health matters.

c) Provision of Legal Representation and Hearings

At times patients have appeared to be unaware of their right to be represented by legal counsel at the hearings and this has been a concern to the Board for quite some time. Patients without legal representation are advised by the Board of their right to legal counsel, and that the hearing will be adjourned to accommodate counsel, but most patients choose to proceed without representation.

Those who wish to have counsel present who can afford to do so may employ a private practitioner for that purpose. Those who cannot afford to employ a private practitioner and who qualify for legal aid may request representation from either Nova Scotia Legal Aid or Dalhousie Legal Aid. However legal representation is not always possible due to many factors such as lack of sufficient notice or lack of sufficient available lawyers. It appears that approximately 33 percent of the patients coming before the Board during the period April 1, 2004- March 31, 2005 were represented by legal counsel. Our statistics do not indicate how many patients requested legal representation but could not obtain it.

The presence of counsel for the patient better assures that all issues relevant to the patient's status are presented. This is particularly relevant in view of the Involuntary Psychiatric Treatment Act that will be coming into effect this year which has the potential to interfere in an unprecedented manner with an individual's autonomy. In the absence of counsel, the Board must do what it can to assure that such issues are raised and appropriate questions asked, but its abilities are limited in this regard. It does not have the opportunity to interview the patient or to read the charts before the hearing. The work of the Board would be facilitated if legal counsel were more readily available to the patients. Government money should be forthcoming to properly fund a Legal Aid program specifically for the purposes of having legal representation of all patients at mental health review board hearings. This would greatly facilitate the review process, would better protect patients' rights, and would ensure that the issues and evidence are thoroughly and appropriately addressed.

d) Funding of Community Outreach Teams

The Board notes that many of the patients that come before it have come into crisis and are detained under the provisions of the Hospitals Act due to inadequate or inappropriate community support that would otherwise have enabled them to receive treatment while staying in the community or that would have facilitated an early discharge. As the Involuntary Psychiatric Treatment Act comes into effect, the Board sees that the requirement for increased community supports such as a range of appropriate housing, assertive outreach teams, community mental health programs with the full range of staff is an urgent priority, and specific funding should be earmarked for this purpose.

## CONCLUSION

In this report, the Psychiatric Facilities Review Board advises the Legislature that during the year being reported, there were more requests but fewer hearings than in the previous year. The number of changes in status from formal to informal has increased. The Board urges that the availability of legal counsel for patients requesting it be assured through appropriate

funding of such a program. The issue of remuneration of board members requires examination in order to address recruitment/retention issues particularly for psychiatrist board members. Specially earmarked government funding for the development of increased community mental health supports in advance of the implementation of the Involuntary Psychiatric Treatment Act is an area that we recommend be urgently addressed.